

13 November 1975

MEMORANDUM FOR: Office of Medical Services Staff Physicians  
SUBJECT : Pay and Professional Liability Protection

1. At a general membership meeting on 11 September 1975 the Council of Federal Medical Directors unanimously supported a resolution directing me as the President to pursue activities to obtain comparability in pay and professional liability protection for Federal civilian physicians with that provided or proposed for physicians in the uniformed services and the Veterans Administration. In accordance with this mandate and discussion of these subjects at the 12 November 1975 Office of Medical Services Staff Meeting, please find attached copies of three letters on these two subjects which were modified in each instance to fit the addresses listed for each:

A. Pay inequity

1. Senate

Gale W. McGee, Committee on Post Office and  
Civil Service  
Quentin N. Burdick, Committee on Post Office  
Civil Service  
William Lloyd Scott, Virginia  
Harry F. Byrd, Jr., Virginia  
Charles McC. Mathias, Jr., Maryland  
J. Glenn Beall, Jr., Maryland

2. House

David N. Henderson, Committee on Post Office  
and Civil Service  
Morris K. Udall, Committee on Post Office  
Civil Service  
Richard C. White, Committee on Post Office  
Civil Service

SUBJECT: Pay and Professional Liability Protection

Herbert E. Harris, II  
Joseph L. Fisher  
Gilbert Gude  
Gladys Noon Spellman

B. Professional liability coverage

1. Senate

Quentin N. Burdick, Committee on Judiciary  
As in A-1 above

2. House

Peter W. Rodino, Jr., Committee on Judiciary  
Walter Flowers, Committee on Judiciary  
As in A-2 above

2. Consistent with a communication the Executive Committee of the Council directed me to send to all Council members on 11 November 1975, we additionally request each of you write your respective representatives and the chairmen of the committees listed, all of whom have the authority and conceivably the responsibility to initiate the legislation we are requesting on pay and professional liability protection. To be recognized, we must be heard, and we must keep our elected representatives advised individually as well as through appropriate organizations.

STATINTL

Medical Systems Development Officer  
Office of Medical Services

STATINTL Attachments

OMS/MSDO: [REDACTED] clp

Orig & 1 - MSDO Files  
1 - D/MS  
1 - DD/MS  
1 - C/FSS  
1 - C/CD  
1 - C/OD  
1 - C/PD  
1 - DC/PD

1 - C/SPD

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2 - O-D/MS Files

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STATINTL

  
October 24, 1975

Honorable Gale W. McGee, Chairman  
Post Office and Civil Service Committee  
U. S. Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

The Council of Federal Medical Directors for Occupational Health is an organization of physician directors of Federal occupational health programs and other full-time physicians practicing occupational health in the Federal Government. The Council has been active since 1962 providing an effective means of professional interchange of experience and knowledge in occupational health in order to improve the health of Federal employees through the improved practice of occupational medicine in the Federal Government.

The Council followed with interest the enactment of P.L. 93-274 (Uniformed Services Medical Officers Revised Pay Structure) dated 6 May 1974, the implementation of this Act through Executive Order 11800 dated 17 August 1974, and the effectuation of Executive Order 11812 (Adjustment of Uniformed Services Pay Rates, Subsistence and Quarters Allowances) dated 7 October 1974. As you know these measures have enabled medical officers of the uniformed services to earn more than the maximum salary (\$36,000 then and \$37,800 now) permitted by the Executive Pay Schedule through special pay and active duty agreement pay.

Honorable Gale W. McGee

- 2 -

October 24, 1975

In the present Congress we have followed H.R. 8240 which has been passed by the House and Senate and was signed into law by the President on 22 October 1975. As you know, this legislation is intended to permit the Veterans Administration to pay physicians more than the \$37,800 maximum salary allowed by the Executive Pay Schedule through special pay and incentive pay.

With H.R. 8240 (P.L. 94-123) becoming law along with P.L. 93-274, the ability to pay over the \$37,800 Executive Pay Scale limit has been provided for 27,093 of the 27,724 Federal physicians, according to American Medical Association (AMA) figures. Stated another way, this will mean there are 631 civilian physicians in Federal service, according to the AMA data, who are not members of the aforementioned groups who will not have pay comparability with their peers. As an independent check on the above AMA figures, a computer run was obtained from the Civil Service Commission which disclosed there are 922 Federal civilian physicians not covered by the previously cited laws. Thus, from the above figures, 28 to 44 of Federal physicians have been overlooked and are not and will not be receiving comparable pay for comparable work.

In addition to the inequity of the foregoing situation, this has and will further weaken our ability to attract and retain well-qualified physicians in civilian service to provide the high standard of medical service our Federal employees deserve. Our experience in hiring and retaining physicians has been comparable to that of the Veterans Administration as discussed in the House and Senate hearings on H.R. 8240 and S. 1711.

In view of the above the Council members have unanimously directed me to advise you of the previously outlined information and to request that you consider initiating whatever action is necessary to provide pay comparability for all Federal civilian physicians with that afforded all other Federal physicians in the uniformed services and the Veterans Administration by P.L. 93-274 and P.L. 94-123. Specifically, we request that you take whatever steps are required to secure the enactment of legislation which will contain pay provisions for all Federal civilian physicians comparable to those of P.L. 93-274 and P.L. 94-123 to correct the existing pay inequities.

Honorable Gale W. McGee

- 3 -

October 24, 1975

May I thank you for your prompt attention to this matter. If I may be of any further assistance to you, please feel free to call upon me.

Respectfully yours,


STATINTL



President  
Council of Federal Medical Directors

cc: Senator Quentin N. Burdick

STATINTL

  
October 31, 1975

Honorable Herbert E. Harris, II  
U. S. House of Representatives  
Room 1229 Longworth House Office Building  
Washington, D.C. 21515

Dear Mr. Harris:

It appears in the area of professional liability protection for civilian Federal medical personnel the same type of inequity is developing as presently exists in the area of pay, as outlined in my letter of 28 October 1975 to you.

In the area of professional liability all Federal medical personnel are provided some protection from malpractice suits for conduct within the scope of their employment by the Federal Tort Claims Act (28 U.S.C. 1346(b) and 2672). However, this Act does not proscribe private suits against the individual employee; it only establishes a possibly more attractive alternative.

In order to eliminate the limitations of professional liability protection offered by the Federal Tort Claims Act (FTCA), the FTCA was amended in 1961 to make that Act the sole remedy for damages, injuries and death resulting from the operation of any motor vehicle by any employee of the United States acting within the scope of his employment (28 U.S.C. 2679, P.L. 87-258). In 1965, medical personnel of the Veterans Administration (VA) were protected from personal suits by an amendment to Title 38 which made the FTCA the sole remedy for their alleged malpractice (38 U.S.C. 4116, P.L. 89-311). Similar protection was granted medical personnel of the Public Health Service (PHS) in 1970 (42 U.S.C. 233, P.L. 91-623).

Honorable Herbert E. Harris, II - 2 - October 31, 1975

Now with S. 1395 and H.R. 3954 (which has been amended to include Department of Defense (DOD) civilian medical personnel) being proposed to provide professional liability for DOD medical personnel, the Federal civilian medical personnel not in the PHS, VA or DOD will once again not be provided the same protection as their peers.

The widely-publicized skyrocketing of medical malpractice insurance rates is a direct result of the trend toward very large settlements and awards in medical malpractice cases. Because civilian medical personnel can be held personally liable for alleged malpractice, many feel they must carry private insurance. Insurance premiums may range from \$500 to \$24,000 a year, depending on the state and the nature of the practice. In some states it is not available at all, just as it is not generally available for practice abroad. There is every indication that malpractice insurance premiums will double or triple within the next two to three years. Meanwhile, the salary of Federal civilian doctors has been held well below the industry average by a statutory ceiling (5 U.S.C. 5308). Whatever the cost of malpractice insurance, we feel it is unjust that our physicians must choose between personal vulnerability to a large malpractice award and paying, out of their own pockets, for protection in their prescribed duties as Federal employees.

After extensive review and discussion, it is our considered judgment that, as with Federal physicians, Federal civilian medical personnel represent only 2-4% of all Federal uniformed service, Veterans Administration and civilian medical personnel.

In light of this information, the Council members have unanimously directed me to request your consideration as one of the Congressional representatives of our members in amending an appropriate pending bill to include professional liability coverage for civilian medical personnel of all Federal agencies. If this proves not to be possible, then we request you introduce a new bill that will contain provisions comparable to those provided the PHS and VA or those proposed in H.R. 3954, and that you work to secure its enactment into law.

Honorable Herbert E. Harris, II - 3 - October 31, 1975

May I thank you for your assistance in this item of vital concern to all of us. If I may be of further aid to you, please feel free to call me.

Respectfully yours,

STATINTL

  
President  
Council of Federal Medical Directors





## **COUNCIL OF FEDERAL MEDICAL DIRECTORS FOR OCCUPATIONAL HEALTH**

STATINTL

November 5, 1975

Honorable Walter Flowers, Chairman  
Subcommittee on Administrative Law  
Governmental Relations  
Committee on Judiciary  
U. S. House of Representatives  
Suite 2137 Rayburn House Office Building  
Washington, D.C. 20515

Dear Mr. Flowers:

The Council of Federal Medical Directors for Occupational Health is an organization of physician directors of Federal occupational health programs and other full-time physicians practicing occupational health in the Federal Government. The Council has been active since 1962 providing an effective means of professional interchange of experience and knowledge in occupational health in order to improve the health of Federal employees through the improved practice of occupational medicine in the Federal Government.

In the area of professional liability all Federal medical personnel are provided some protection from malpractice suits for conduct within the scope of their employment by the Federal Tort Claims Act (28 U.S.C. 1346(b) and 2672). However, this Act does not proscribe private suits against the individual employee; it only establishes a possibly more attractive alternative.

In order to eliminate the limitations of professional liability protection offered by the Federal Tort Claims Act (FTCA), the FTCA was amended in 1961 to make that Act the sole remedy for damages, injuries and death resulting from the operation of any motor vehicle by any employee of the United States acting within the scope of his employment (28 U.S.C. 2679, P.L. 87-258). In 1965, medical personnel of the Veterans Administration (VA) were protected from personal suits by an amendment to Title 38 which made the FTCA the sole remedy for their alleged malpractice (38 U.S.C. 4116, P.L. 89-311). Similar protection was granted medical personnel of the Public Health Service (PHS) in 1970 (42 U.S.C. 233, P.L. 91-623).

Honorable Walter Flowers - 2 -

November 5, 1975

Now with S. 1395 and H.R. 3954 (which was passed by the House on 21 July 1975 being proposed to provide professional liability protection for the Department of Defense (DOD) medical personnel, the Federal civilian medical personnel not in the PHS, VA or DOD will not be provided the same protection as their peers.

Once H.R. 3954 or S. 1395 becomes law, which seems to be a reasonable possibility, complete professional liability coverage within the scope of one's Federal employment will have been provided for 27,093 of the 27,724 Federal physicians, according to the AMA data, who are not members of the aforementioned groups who will not have professional liability coverage comparable with their peers. As an independent check on the above AMA figures, a computer run was obtained from the Civil Service Commission which disclosed there are 922 Federal civilian physicians not covered by the previously cited and proposed laws. Thus, from the above figures, 2% to 4% of Federal physicians have been overlooked and are not and will not be receiving equal protection for comparable work.

The widely-publicized skyrocketing of medical malpractice insurance rates is a direct result of the trend toward very large settlements and awards in medical malpractice cases. Because civilian medical personnel can be held personally liable for alleged malpractice, many feel they must carry private insurance. Insurance premiums may range from \$500 to \$24,000 a year, depending on the state and the nature of the practice. In some states it is not available at all, just as it is not generally available for practice abroad. There is every indication that malpractice insurance premiums will double or triple within the next two to three years. Meanwhile, the salary of Federal civilian doctors has been held well below the industry average by a statutory ceiling (5 U.S.C. 5308). Whatever the cost of malpractice insurance, we feel it is unjust that our physicians must choose between personal vulnerability to a large malpractice award and paying, out of their own pockets, for protection in their prescribed duties as Federal employees.

Honorable Walter Flowers

- 3 -


November 5, 1975

In light of the foregoing information, the Council members have unanimously directed me to request your consideration in amending an appropriate pending bill to include professional liability coverage for the civilian medical personnel of all Federal agencies. If this proves not to be feasible, then we request you introduce a new bill that will contain provisions comparable to those provided the PHS and VA or those proposed in H.R. 3954 and that you work to secure its enactment into law.

May I thank you for your assistance in this item of vital concern to all of us. If I may be of further assistance to you, please feel free to call me.

Respectfully yours,

STATINTL

  
President  
Council of Federal Medical Directors